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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,971	07/14/2003	Richard J. Dibbs	17306/107	5927
26646	7590	12/03/2004	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			VAN, QUANG T	
			ART UNIT	PAPER NUMBER
			3742	

DATE MAILED: 12/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

03

<b>Office Action Summary</b>	Application No. 10/618,971	Applicant(s) DIBBS, RICHARD J.	
	Examiner Quang T Van	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 50-56 and 86-100 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 50-56, 86-97 and 100 is/are allowed.
- 6) ☒ Claim(s) 98 and 99 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 98-99 are rejected under 35 U.S.C. 102(e) as being anticipated by Ball et al (US 6,455,094) cited by applicant. Ball discloses a treatment of food product using humidity controlled air comprising an oven (col. 8, lines 1-10) configured to increase a temperature of an in-shell egg to a first predetermined temperature is a range of between 120°F and 140°F for a predetermined time interval (col. 5, lines 5-15 and table 1); arranged at least one of (a) upstream and (b) downstream of the oven, at least one of (a) an orientor configured to orient the in-shell egg, (b) an egg washer configured ....the in-shell egg, (f) **a preheater configured to preheat the in-shell egg**, (g) a sizer configured to determine a size of the in-shell egg, (h) a dryer configured to dry the in-shell egg, (i) a cooler configured to cool the in-shell egg, (j) a packer configured to pack the in-shell egg, and (k) a grader configured to grade the in-shell egg (col. 8, lines 26-31).
2. Claims 98-99 are rejected under 35 U.S.C. 102(e) as being anticipated by Polster (US 6,187,348). Polster discloses a process for heat treating food product comprising an oven (col. 7, lines 39-51) configured to increase a temperature of an in-shell egg to a

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first predetermined temperature is a range of between 120°F and 140°F for a predetermined time interval (col. 10, lines 9-14); arranged at least one of (a) upstream and (b) downstream of the oven, at least one of (a) an orientor configured to orient the in-shell egg, (b) an egg washer configured ....the in-shell egg, (f) **a preheater configured to preheat the in-shell egg**, (g) a sizer configured to determine a size of the in-shell egg, (h) a dryer configured to dry the in-shell egg, (i) a cooler configured to cool the in-shell egg, (j) a packer configured to pack the in-shell egg, and (k) a grader configured to grade the in-shell egg (col. 10, lines 18-25).

3. Claims 50-56, 86-97 and 100 are allowed.

4. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not show or suggest a spiral oven configured to increase a temperature of an in-shell egg to a first predetermined temperature in a range of between 120°F and 140°F for a predetermined time interval as recited in claims 50-55, 86-87; a packer configured to pack the in-shell egg and a grader configured to grade the in-shell egg, wherein the oven is arranged between the packer and the grader as recited in claims 56, 88-97; and the combination steps of performing a grading operation on the in-shell egg; after grading operation, increasing a temperature of the in-shell egg to a first predetermined temperature in a range of between 120°F and 140°F for a predetermined time interval and packing the in-shell egg in a packer after the temperature increasing step as recited in claim 100.

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***Response to Amendment***

5. Applicant's arguments with respect to claims 50-56 and 86-100 have been considered but are moot in view of the new ground(s) of rejection.
6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang T Van whose telephone number is 703-306-9162. The examiner can normally be reached on 8:00Am 7:00Pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 703-305-5766. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



QV

November 24, 2004



Quang T Van  
Primary Examiner  
Art Unit 3742